
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 344 Session of
2003

INTRODUCED BY YUDICHAK, DeWEESE, GEORGE, McCALL, BELARDI,
CAPPELLI, CORRIGAN, HORSEY, LAUGHLIN, LEVDANSKY, McILHATTAN,
SOLOBAY, TANGRETTI, TIGUE, WANSACZ, JAMES, BROWNE, CAWLEY,
GRUCELA, KELLER, LEACH, MANN, READSHAW, STABACK, THOMAS,
WALKO, YOUNGBLOOD AND PALLONE, FEBRUARY 18, 2003

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 18, 2003

AN ACT

1 Amending the act of May 19, 1995 (P.L.4, No.2), entitled "An act
2 providing for the recycling of existing industrial and
3 commercial sites; further defining the cleanup liability of
4 new industries and tenants; establishing a framework for
5 setting environmental remediation standards; establishing the
6 Voluntary Cleanup Loan Fund, the Industrial Land Recycling
7 Fund and the Industrial Sites Cleanup Fund to aid industrial
8 site cleanups; assigning powers and duties to the
9 Environmental Quality Board and the Department of
10 Environmental Resources; and making repeals," providing for
11 previously mined sites with preexisting discharges that are
12 proposed for remining, reclamation or redevelopment; and
13 making editorial changes.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The title and section 102 of the act of May 19,
17 1995 (P.L.4, No.2), known as the Land Recycling and
18 Environmental Remediation Standards Act, are amended to read:

19 AN ACT

20 Providing for the recycling of existing industrial and
21 commercial sites; further defining the cleanup liability of

1 new industries and tenants; establishing a framework for
2 setting environmental remediation standards; establishing the
3 Voluntary Cleanup Loan Fund, the Industrial Land Recycling
4 Fund and the Industrial Sites Cleanup Fund to aid industrial
5 site cleanups; assigning powers and duties to the
6 Environmental Quality Board and the Department of
7 Environmental [Resources] Protection; and making repeals.

8 Section 102. Declaration of policy.

9 The General Assembly finds and declares as follows:

10 (1) The elimination of public health and environmental
11 hazards on existing commercial and industrial land across
12 this Commonwealth is vital to their use and reuse as sources
13 of employment, housing, recreation and open-space areas. The
14 reuse of industrial land is an important component of a sound
15 land-use policy that will help prevent the needless
16 development of prime farmland, open-space areas and natural
17 areas and reduce public costs for installing new water, sewer
18 and highway infrastructure.

19 (2) Incentives should be put in place to encourage
20 responsible persons to voluntarily develop and implement
21 cleanup plans without the use of taxpayer funds or the need
22 for adversarial enforcement actions by the Department of
23 Environmental [Resources] Protection which frequently only
24 serve to delay cleanups and increase their cost.

25 (3) Public health and environmental hazards cannot be
26 eliminated without clear, predictable environmental
27 remediation standards and a process for developing those
28 standards. Any remediation standards adopted by this
29 Commonwealth must provide for the protection of public health
30 and the environment.

1 (4) It is necessary for the General Assembly to adopt a
2 statute which sets environmental remediation standards to
3 provide a uniform framework for cleanup decisions because few
4 environmental statutes set cleanup standards and to avoid
5 potentially conflicting and confusing environmental
6 standards. The General Assembly also has a duty to implement
7 the provisions of section 27 of Article I of the Constitution
8 of Pennsylvania with respect to environmental remediation
9 activities.

10 (5) It is necessary for the General Assembly to adopt a
11 statute which provides a mechanism to establish cleanup
12 standards without relieving a person from any liability for
13 administrative, civil or criminal fines or penalties
14 otherwise authorized by law and imposed as a result of
15 illegal disposal of waste or for pollution of the land, air
16 or waters of this Commonwealth on an identified site.

17 (6) Cleanup plans should be based on the actual risk
18 that contamination on the site may pose to public health and
19 the environment, taking into account its current and future
20 use and the degree to which contamination can spread offsite
21 and expose the public or the environment to risk, not on
22 cleanup policies requiring every site in this Commonwealth to
23 be returned to a pristine condition.

24 (7) Cleanup plans should have as a goal remedies which
25 treat, destroy or remove regulated substances whenever
26 technically and economically feasible as determined under the
27 provisions of this act.

28 (8) The Department of Environmental [Resources]
29 Protection now routinely through its permitting policies
30 determines when contamination will and will not pose a

significant risk to public health or the environment. Similar concepts should be used in establishing cleanup policies.

(9) The public is entitled to understand how remediation standards are applied to a site through a plain language description of contamination present on a site, the risk it poses to public health and the environment and any proposed cleanup measure.

Section 2. The definitions of "department," "point of compliance," "release" and "secretary" in section 103 of the act are amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Department." The Department of Environmental [Resources] Protection of the Commonwealth or its successor agency.

* * *

"Point of compliance." For the purposes of determining compliance with groundwater standards, the property boundary at the time the contamination is discovered or such point beyond the property boundary as the Department of Environmental [Resources] Protection may determine to be appropriate.

* * *

"Release." Spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a regulated substance into the environment in a manner not authorized by the Department of Environmental [Resources] Protection. The term includes the abandonment or discarding of barrels, containers, vessels and other receptacles

1 containing a regulated substance.

2 * * *

3 "Secretary." The Secretary of Environmental [Resources]
4 Protection of the Commonwealth.

5 * * *

6 Section 3. Sections 106(a), 302(b), 303(e), 304(k), 305(a),
7 702 and 905(a) of the act are amended to read:

8 Section 106. Scope.

9 (a) Remediation standards.--The environmental remediation
10 standards established under this act shall be used whenever site
11 remediation is voluntarily conducted or is required under the
12 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
13 Streams Law, the act of May 31, 1945 (P.L.1198, No.418), known
14 as the Surface Mining Conservation and Reclamation Act, the act
15 of January 8, 1960 (1959 P.L.2119, No.787), known as the Air
16 Pollution Control Act, the act of July 7, 1980 (P.L.380, No.97),
17 known as the Solid Waste Management Act, the act of July 13,
18 1988 (P.L.525, No.93), referred to as the Infectious and
19 Chemotherapeutic Waste Law, the act of October 18, 1988
20 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and
21 the act of July 6, 1989 (P.L.169, No.32), known as the Storage
22 Tank and Spill Prevention Act, to be eligible for cleanup
23 liability protection under Chapter 5. In addition, the
24 remediation standards established under this act shall be
25 considered as applicable, relevant and appropriate requirements
26 for this Commonwealth under the Comprehensive Environmental
27 Response, Compensation, and Liability Act of 1980 (Public Law
28 96-510, 42 U.S.C. § 9601 et seq.) and the Hazardous Sites
29 Cleanup Act.

30 * * *

1 Section 302. Background standard.

2 * * *

3 (b) Attainment.--Final certification that a site or portion
4 of a site meets the background standard shall be documented in
5 the following manner:

6 (1) Attainment of the background standard shall be
7 demonstrated by collection and analysis of representative
8 samples from environmental media of concern, including soils
9 and groundwater in aquifers in the area where the
10 contamination occurs through the application of statistical
11 tests set forth in regulation or, if no regulations have been
12 adopted, in a demonstration of a mathematically valid
13 application of statistical tests. The [Department of
14 Environmental Resources] department shall also recognize
15 those methods of attainment demonstration generally
16 recognized as appropriate for that particular remediation.

17 (2) A final report that documents attainment of the
18 background standard shall be submitted to the department
19 which includes, as appropriate:

20 (i) The descriptions of procedures and conclusions
21 of the site investigation to characterize the nature,
22 extent, direction, volume and composition of regulated
23 substances.

24 (ii) The basis for selecting environmental media of
25 concern, descriptions of removal or decontamination
26 procedures performed in remediation, summaries of
27 sampling methodology and analytical results which
28 demonstrate that remediation has attained the background
29 standard.

30 (3) Where remediation measures do not involve removal or

1 treatment of a contaminant to the background standard, the
2 final report shall demonstrate that any remaining
3 contaminants on the site will meet Statewide health standards
4 and show compliance with any postremediation care
5 requirements that may be needed to maintain compliance with
6 the Statewide health standards.

7 (4) Institutional controls such as fencing and future
8 land use restrictions on a site may not be used to attain the
9 background standard. Institutional controls may be used to
10 maintain the background standard after remediation occurs.

11 * * *

12 Section 303. Statewide health standard.

13 * * *

14 (e) Attainment.--Final certification that a site or portion
15 of a site meets the Statewide health standard shall be
16 documented in the following manner:

17 (1) Attainment of cleanup levels shall be demonstrated
18 by collection and analysis of representative samples from the
19 environmental medium of concern, including soils, and
20 groundwater in aquifers at the point of compliance through
21 the application of statistical tests set forth in regulation
22 or, if no regulations have been adopted, in a demonstration
23 of a mathematically valid application of statistical tests.
24 The [Department of Environmental Resources] department shall
25 also recognize those methods of attainment demonstration
26 generally recognized as appropriate for that particular
27 remediation.

28 (2) A final report that documents attainment of the
29 Statewide health standard shall be submitted to the
30 department which includes the descriptions of procedures and

1 conclusions of the site investigation to characterize the
2 nature, extent, direction, rate of movement of the site and
3 cumulative effects, if any, volume, composition and
4 concentration of contaminants in environmental media, the
5 basis for selecting environmental media of concern,
6 documentation supporting the selection of residential or
7 nonresidential exposure factors, descriptions of removal or
8 treatment procedures performed in remediation, summaries of
9 sampling methodology and analytical results which demonstrate
10 that contaminants have been removed or treated to applicable
11 levels and documentation of compliance with postremediation
12 care requirements if they are needed to maintain the
13 Statewide health standard.

14 (3) Institutional controls such as fencing and future
15 land use restrictions on a site may not be used to attain the
16 Statewide health standard. Institutional controls may be used
17 to maintain the Statewide health standard after remediation
18 occurs.

19 * * *

20 Section 304. Site-specific standard.

21 * * *

22 (k) Attainment.--Compliance with the site-specific standard
23 is attained for a site or portion of a site when a remedy
24 approved by the department has been implemented in compliance
25 with the following criteria:

26 (1) Soil, groundwater, surface water and air emission
27 standards as determined under subsections (a) through (h)
28 have been attained.

29 (2) Attainment of the site-specific standard shall be
30 demonstrated by collection and analysis of samples from

1 affected media, as applicable, such as surface water, soil,
2 groundwater in aquifers at the point of compliance through
3 the application of statistical tests set forth in regulation
4 or, if no regulations have been adopted, in a demonstration
5 of a mathematically valid application of statistical tests.
6 The [Department of Environmental Resources] department shall
7 also recognize those methods of attainment demonstration
8 generally recognized as appropriate for that particular
9 remediation.

10 * * *

11 Section 305. Special industrial areas.

12 (a) Special sites.--For property used for industrial
13 activities where there is no financially viable responsible
14 person to clean up contamination or for land located within
15 enterprise zones designated pursuant to the requirements of the
16 Department of Community [Affairs] and Economic Development, the
17 review procedures of this section shall apply for persons
18 conducting remediation activities who did not cause or
19 contribute to contamination on the property. Any environmental
20 remediation undertaken pursuant to this section shall comply
21 with one or more of the standards established in this chapter.
22 This section shall also apply to any person who proposes to
23 remine, reclaim or redevelop an area on which there is a
24 preexisting discharge from previous mining and has secured
25 special authorization under section 4.6(a) of the act of May 31,
26 1945 (P.L.1198, No.418), known as the Surface Mining
27 Conservation and Reclamation Act.

28 * * *

29 Section 702. Industrial Sites Cleanup Fund.

30 (a) Establishment.--There is hereby established a separate

1 account in the State Treasury, to be known as the Industrial
2 Sites Cleanup Fund, which shall be a special fund administered
3 by the Department of [Commerce. Within 60 days of the effective
4 date of this act, the Department of Commerce shall finalize
5 guidelines and issue application forms to administer this fund.]
6 Community and Economic Development.

7 (b) Purpose.--The Industrial Sites Cleanup Fund is to
8 provide financial assistance to persons who did not cause or
9 contribute to the contamination on property used for industrial
10 activity on or before the effective date of this act and who
11 propose to undertake a voluntary cleanup of the property. The
12 financial assistance shall be in an amount of up to 75% of the
13 costs incurred for completing an environmental study and
14 implementing a cleanup plan by an eligible applicant. Financial
15 assistance may be in the form of grants as provided in this
16 section or low-interest loans, to be lent at a rate not to
17 exceed 2%.

18 (c) Grants.--Grants may be made to political subdivisions or
19 their instrumentalities or local economic development agencies
20 for the purposes of this section if the grantee owns the site on
21 which the cleanup is being conducted and the grantee is
22 overseeing the cleanup. The total amount of grants awarded under
23 this section in any one fiscal year shall not exceed 20% of the
24 total amount of the Industrial Sites Cleanup Fund.

25 (d) Loans.--Loans meeting the requirements of subsection (b)
26 may be made to the following categories of applicants:

- 27 (1) Local economic development agencies.
28 (2) Political subdivisions or their instrumentalities.
29 (3) Other persons determined to be eligible by the
30 Department of [Commerce] Community and Economic Development.

(e) Priority for financial assistance.--The Department of [Commerce] Community and Economic Development shall take all of the following factors into consideration when determining which applicants shall receive financial assistance under this section:

(1) The benefit of the remedy to public health, safety and the environment.

(2) The permanence of the remedy.

(3) The cost effectiveness of the remedy in comparison with other alternatives.

(4) The financial condition of the applicant.

(5) The financial or economic distress of the area in which the cleanup is being conducted.

(6) The potential for economic development.

The Department of [Commerce] Community and Economic Development shall consult with the department when determining priorities for funding under this section.

(f) Terms and conditions.--The Department of [Commerce] Community and Economic Development shall have the power to set terms and conditions applicable to loans and grants it deems appropriate. The Department of [Commerce] Community and Economic Development may consider such factors as it deems relevant, including current market interest rates and the necessity to maintain the moneys in this fund in a financially sound manner. Loans may be made based upon the ability to repay from future revenue to be derived from the cleanup, by a mortgage or other collateral, or on any other fiscal matters which the Department of [Commerce] Community and Economic Development deems appropriate.

(g) Funds.--In addition to any funds appropriated by the

1 General Assembly, \$15,000,000 shall be transferred upon approval
2 of the Governor from the Hazardous Sites Cleanup Fund
3 established by the act of October 18, 1988 (P.L.756, No.108),
4 known as the Hazardous Sites Cleanup Act, to the Industrial
5 Sites Cleanup Fund for the purpose of implementing the program
6 established in this section. Moneys received by the Department
7 of [Commerce] Community and Economic Development as repayment of
8 outstanding loans shall be deposited in the fund. Any interest
9 earned by moneys in this fund shall remain in this fund. Moneys
10 in the fund are hereby appropriated to the Department of
11 [Commerce] Community and Economic Development for the purpose of
12 implementing this section.

13 (h) Annual report.--The Department of [Commerce] Community
14 and Economic Development shall on October 1 of each year report
15 to the General Assembly on the grants, loans, expenditures and
16 commitments made from this fund. The annual report shall include
17 an evaluation of the effectiveness of this fund in recycling
18 industrial and commercial sites. The evaluation shall include
19 any recommendations for additional changes if necessary to
20 improve the effectiveness of this fund in recycling such sites.
21 Section 905. Enforcement.

22 (a) General.--The department is authorized to use the
23 enforcement and penalty provisions applicable to the
24 environmental medium or activity of concern, as appropriate,
25 established under the act of June 22, 1937 (P.L.1987, No.394),
26 known as The Clean Streams Law, the act of May 31, 1945
27 (P.L.1198, No.418), known as the Surface Mining Conservation and
28 Reclamation Act, the act of January 8, 1960 (1959 P.L.2119,
29 No.787), known as the Air Pollution Control Act, the act of July
30 7, 1980 (P.L.380, No.97), known as the Solid Waste Management

1 Act, the act of July 13, 1988 (P.L.525, No.93), referred to as
2 the Infectious and Chemotherapeutic Waste Law, the act of
3 October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites
4 Cleanup Act, or the act of July 6, 1989 (P.L.169, No.32), known
5 as the Storage Tank and Spill Prevention Act, to enforce the
6 provisions of this act.

7 * * *

8 Section 4. This act shall take effect in 60 days.